

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

CYNTHIA MOYA ,

Appellant,

v.

No. 17cv415 RB/KBM

U.S. EAGLE FEDERAL CREDIT UNION and
PHILIP J. MONTOYA, Trustee,

Appellees.

ORDER DENYING MOTION FOR STAY PENDING APPEAL

THIS MATTER comes before the Court on Cynthia Moya's Presentment for Stay Pending Appeal (Doc. 25), filed June 21, 2017.

Cynthia Moya's bankruptcy case, United States Bankruptcy Court Case No. 16-13074, was dismissed on March 23, 2017. (*See* Doc. 1 at 5–6.) On April 5, 2017, the United States Bankruptcy Court for the District of New Mexico filed the Clerk's Certificate which indicates that Ms. Moya is appealing the dismissal of her case, Case No. 16-13074, and elects to have the appeal heard by the United States District Court rather than by the Bankruptcy Appellate Panel. (*See id.* at 3.)

On May 24, 2017, Ms. Moya filed a Presentment for Stay Pending Appeal, Doc. 73 in her bankruptcy case. *See* Fed. R. Bankr. P. 8007(a)(1) (a party requesting the stay of a bankruptcy court's order pending appeal of that order generally "must move first in the bankruptcy court"). Courts consider the following factors when determining whether to grant a motion for stay pending appeal: "(1) the likelihood that the party seeking the stay will prevail on the merits of the appeal; (2) the likelihood that the moving party will suffer irreparable injury unless the stay is granted; (3) whether granting the stay will result in substantial harm to the other parties to the

appeal; and (4) the effect of granting the stay upon the public interest.” *Lang v. Lang (In re Lang)*, 305 B.R. 905, 911 (10th Cir. BAP 2004) (citations omitted). The party requesting a stay pending appeal must satisfy all four factors to obtain a stay pending appeal. *In re Sunland, Inc.*, 507 B.R. 753, 765 (Bankr. D.N.M. 2014) (citing *Moore v. Tangipahoa Parish Sch. Bd.*, 2013 WL 141791, *20 (5th Cir. Jan 14, 2013); *In re Sunflower Racing, Inc.*, 225 B.R. 225, 227 (D. Kan. 1998)).

The Bankruptcy Court denied Ms. Moya’s request for a stay pending appeal because she “failed to demonstrate a likelihood of success on the merits of the appeal or irreparable harm if the Dismissal Order is not stayed.” No. 16-13074, Doc. 79 at 4 (Bankr. D.N.M. May 25, 2017).

Ms. Moya’s motion to this Court for a stay pending appeal is identical to her Presentment for Stay Pending Appeal in her bankruptcy case. See No. 16-13074, Doc. 73 (Bankr. D.N.M. May 24, 2017). This Court agrees with the Bankruptcy Court’s findings that Ms. Moya failed to demonstrate a likelihood of success on the merits of the appeal and irreparable harm if the Dismissal Order is not stayed. The Court will, therefore, deny Ms. Moya’s request for a stay pending appeal.

IT IS ORDERED that Cynthia Moya’s Presentment for Stay Pending Appeal, Doc. 25, filed June 21, 2017, is **DENIED**.

Robert C. Brack
ROBERT C. BRACK
UNITED STATES DISTRICT JUDGE